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Georgia Local Government Law: Court Resolution of County Government Disagreements

by Paul Vignos*

I. INTRODUCTION

County government regularly involves disagreements between county commissioners and other county officers. Solutions include arbitration,¹ mediation,² recalls,³ regular elections,⁴ and courtroom confrontations.⁵ Enough cases go through the courts to suggest a pattern of judicial resolution. In reviewing past decisions, one hopes to understand what the courts offer, how they work, why they decide as they do, and who they favor. At least, one hopes to reduce potential frustration over court battles that might be better resolved elsewhere.

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1. See, e.g., *Mobley v. Polk County*, 242 Ga. 798, 801, 251 S.E.2d 538, 541 (1979). Under a 1967 local law, budget requests by the tax commissioner in Polk County are subject to arbitration if disapproved by the Board of Commissioners.

2. See, e.g., The Honorable Dorothy T. Beasley, *Planning for the Future of our Courts*, 9 GA. ST. U. L. REV. 395, 400 (1993).

3. See O.C.G.A. § 21-4-5 to -21 (1992).

4. See, e.g., *Mobley*, 242 Ga. at 802, 251 S.E.2d at 541. "Indeed, if the elected official fails to perform his duty, including the duty delegated by him to his employees, he too may be subject to mandamus. More likely, he may not be re-elected by the voters. Such is our political process." *Id.*

5. In a dispute between the sheriff and the county commissioners of Laurens County, the Georgia Supreme Court held that superior court is the proper place for resolution of disputes between county commissioners and others. *Bussell v. Youngblood*, 239 Ga. 553, 556, 238 S.E.2d 89, 92 (1977).

II. BACKGROUND ISSUES

A. *The Role of History in Georgia County Government*

Historical developments affect today's Georgia county governments as much as modern law making does. The county offices of sheriff, tax commissioner, probate judge, clerk of the superior court, treasurer, coroner, and surveyor are all as old as the state of Georgia. Each office has a role in administering the remote business of state government at the county level, but not all offices are constitutionally protected.⁶ Arguably, no county officer performing administrative duties should be constitutionally protected.⁷ Concern for the local balance of power combined with 200 years of history,⁸ however, prompted specific protection for the sheriff, tax collector, clerk of the court, and probate judge.⁹

When the subcommittee on local government organization met to consider changes for the Georgia Constitution of 1983, they based protection of county officers on three concerns: 1) political pressure by

6. The following have been held to be county officers: an ordinary (now probate judge), *Lee v. Byrd*, 169 Ga. 622, 151 S.E. 28 (1929); a clerk of the superior court, *McGill v. Simmons*, 172 Ga. 127, 157 S.E. 273 (1930); a tax collector, tax receiver, and sheriff, *Truesdal v. Freeney*, 186 Ga. 288, 197 S.E. 783 (1938); a county treasurer, *Massenburg v. The Commissioners of Bibb County*, 96 Ga. 614, 23 S.E. 998 (1895); a coroner, *McBrien v. Starkweather*, 43 Ga. App. 818, 160 S.E. 548 (1931). County officers, having been defined by the courts, were incorporated into the Georgia Constitution of 1983 except for the coroner, county surveyor, and treasurer. The coroner was not included because the committee rewriting the constitution concluded that there was no lobby for coroners in the general assembly and the constitutional office could be abolished in order to permit creation of a medical examiner by statute. The surveyor was not included because the same committee concluded that the office was an anachronism. The treasurer was not included because the office could already be abolished by the general assembly (O.C.G.A. § 36-6-1(b) (1992)), and had already been abolished for most counties. See STATE OF GEORGIA SELECT COMMITTEE ON CONSTITUTIONAL REVISION 1977-1981, TRANSCRIPTS OF MEETINGS, COMMITTEE TO REVISE ART. IX, VOL. I., SUBCOMMITTEE ON LOCAL GOVERNMENT ORGANIZATION, REORGANIZATION AND GENERAL CONCERNS, 75-91 (July 23, 1980) [hereinafter COMMITTEE ON REVISION].

7. See COMMITTEE ON REVISION, *supra* note 6, at 65 (July 23, 1980). As one member of the Committee to Redraft Article IX of the Georgia Constitution asked, "[T]hey're carrying out legislation, so why should you elevate them to that level in the first place?" *Id.* at 64 (comments of Mr. James Burgess).

8. See COMMITTEE ON REVISION, *supra* note 6, at 64 (July 23, 1980) (comments of Mr. Jay Ricketts). The phrase of Justice O.W. Holmes comes to mind: "Upon this point a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

9. GA. CONST. art. IX, § 1, para. 3(a).

the county officers themselves;¹⁰ 2) balance of power within the county system;¹¹ and 3) guidance for the court system.¹² During protracted debates on whether the county officers needed constitutional protection from the governing authority, Representative Warren Evans plainly stated, "I don't want the county commissioners to control all of the officers in the county. I think there has to be some independence there."¹³ Mr. Merrill Greathouse, president of the Georgia Sheriff's Association and Sheriff of Upson County, argued for state-set minimum salaries rather than risk a compensation structure controlled by the county governing authority.¹⁴ The chairman finally concluded, "We have the sense of the committee by majority expression that we do not want the express power to delegate [control of county officer salaries to the county governing authority]."¹⁵ Constitutional protection was, therefore, a response to an evolving struggle between officers at the county level in which the governing authority was winning.

The struggle periodically reaches the Georgia Supreme Court, but generally the courts adopt a hands-off policy of deference to the county

10. See generally COMMITTEE ON REVISION, *supra* note 6, at 85-91 (July 23, 1980). Merrill Greathouse, president of the Georgia Sheriff's Association, was a standing member of the committee and represented the sheriffs' interest in any potential revisions of county power or salary control. Another standing member, Mr. Mundy, had been clerk of the superior court in his county.

11. The Georgia Constitution requires a tripartite system of government and a separation of power. GA. CONST. art. 1, § 2, para. 3 (1983). In Georgia, as in the United States federal government, the legislative branch makes policy, *i.e.*, writes the basic guidelines for government, and the executive branch administers the system of law. The courts resolve any legislative ambiguities. Georgia counties are not part of this tripartite structure and lack the internal balance it provides. For a discussion of the catharsis by which the courts finally arrived at this conclusion, see R. Perry Sentell, Jr., *Delegation in Georgia Local Government Law*, 7 GA. ST. B.J. 9 (1970), reprinted in R. PERRY SENTELL, JR., *STUDIES IN GEORGIA LOCAL GOVERNMENT LAW* (3d ed. 1977). While it is beyond the scope of this Article, it is worth considering whether this lack of clear structural balance at the county level is the underlying cause of budgetary disputes that often arise in the context of power disagreements among county officials.

12. "You need to authorize the General Assembly to say who county officers are also, because the court has been a little confused sometimes, just within the last two years decided county commissioners were county officers." COMMITTEE ON REVISION, *supra* note 6, at 62 (July 23, 1980) (comments of Mr. Doug Carlyle).

13. COMMITTEE ON REVISION, *supra* note 6, at 67 (July 23, 1980).

14. COMMITTEE ON REVISION, *supra* note 6, at 82 (Oct. 30, 1980). See also COMMITTEE ON REVISION, *supra* note 6, at 26 (Oct. 22, 1980) (comments of Mr. Carlyle). "[T]he General Assembly had to set the salaries . . . because it had been at the whim of the local governing authority as to their salary were [sic] on starvation wages in effect, and this change was made specifically to take the local authorities out of that process of setting the salaries" *Id.*

15. *Id.* at 51.

governing authority. A particularly difficult case involving deference to the county governing authority found its way to the supreme court in *Grimmsley v. Twiggs County*.¹⁶ The case developed out of the clerk of the superior court's perceived need to hire temporary help for two weeks. The county governing authority disagreed. The clerk secured a letter from the superior court judge authorizing payment for the services and hired the help. The governing authority refused payment again. At the end of the court term, the clerk requested payment a third time, and the governing authority refused again.¹⁷

The problem raised was that the viability of the courts seemed to depend on the discretion of the county commissioners. The clerk attempted to fulfill her statutory duties within the judicial branch of government. The supreme court sided with the clerk.¹⁸ The court based its finding on the separation-of-power principle implemented in the general law authorizing county payment of court expenses "upon certification of the judge of superior court, and without further order."¹⁹ The supreme court proclaimed that the courts "stand between the people and tyranny. They protect the public from the heavy hand of governmental excess The inherent power of the court must be carefully preserved, but also cautiously used."²⁰

This cautionary language saved the case from breaking with an established line of cases holding that the separation-of-powers doctrine does not extend to the county level. *Feagin v. Freeney*²¹ is typical. Holding that it was not concerned with expediency, but only with legality, the supreme court affirmed a line of cases upholding delegations of legislative salary-fixing powers to administrative offices.²² Having first decided that delegation of quasi-legislative power does not violate the constitutional prohibition against legislative delegation per se, the

16. 249 Ga. 632, 292 S.E.2d 675 (1982).

17. *Id.* at 632, 292 S.E.2d at 676.

18. *Id.* at 635, 292 S.E.2d at 678.

19. *Id.* at 633, 292 S.E.2d at 676 (quoting GA. CODE ANN. § 24-3005 (1977) now codified as O.C.G.A. § 15-6-24 (1994)).

20. *Id.* at 634, 292 S.E.2d at 677.

21. 192 Ga. 868, 17 S.E.2d 61 (1941).

22. *Id.* at 873, 17 S.E.2d at 65. Apparently relying on the peculiar Georgia doctrine of *argumentum ab inconvenienti*, a doctrine of judicial restraint where long established customs make the legal consequences of change particularly awkward, the court stated, "A contemporary exposition of the Constitution, practised and acquiesced under for a period of years, fixes the construction, and the Court will not shake or control it." *Id.* at 872, 17 S.E.2d at 64 (quoting *Low v. Commissioners of Pilotage*, R.M. Charl., 302, 316). See R. Perry Sentell, Jr., "Argumentum ab Inconvenienti," 23 URBAN GEORGIA (Mar. 1982), reprinted in R. PERRY SENTELL, JR., ADDITIONAL STUDIES IN GEORGIA LOCAL GOVERNMENT LAW 1615 (1983).

court considered whether delegation of salary fixing powers triggered the constitutional separation-of-powers prohibition.²³ The immediate question before the court was whether the Bibb County Board of Commissioners could set the salary of a municipal court judge of Macon. The risk to avoid was the power of the county commissioners to reduce a salary to "such a small sum as will deprive the judge of an adequate salary and therefore in effect . . . to practically abolish the court."²⁴ However, the court relied on the fact that inferior judges were not even paid until midway through the 19th century.²⁵ That historical fact, therefore, precluded any real risk that insufficient compensation would fail to attract officers and vanquish the courts in 1941.²⁶

Feagin v. Freney continues to be good law as well as *Grimsley v. Twiggs County*, but the cautionary character of *Grimsley* has taken precedence over the court-as-protector language.²⁷ In *Cramer v. County of Spalding*,²⁸ the supreme court recently affirmed the court's historical position of a cautionary, hands-off approach to county government.²⁹ The disagreement at issue was between the county commissioners and the judge of the State Court of Spalding County.³⁰

The judge, misunderstanding *Grimsley* to authorize hiring and firing of court staff at his own discretion, appointed an additional judge and assistant solicitor to deal with an unusually heavy demand for speedy DUI trials.³¹ The county commissioners at first refused to honor the judge's order for temporary help in the crisis. They condoned the

23. 192 Ga. at 870, 17 S.E.2d at 63. "The legislative power of the state shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives." GA. CONST. OF 1983 art. III, § 1, para. 1. This clause has been held to proscribe any delegation of legislative powers. See R. Perry Sentell, *The Law of Municipal Annexation in Georgia: Evolution of a Concept?*, 2 GA. L. REV. 35 (1967); R. PERRY SENTELL, JR., *Home Rule Benefits or Homemade Problems for Georgia Local Government?*, 4 GA. ST. B.J. 317 (1968), reprinted in R. PERRY SENTELL, JR., *STUDIES IN GEORGIA LOCAL GOVERNMENT LAW* (3d ed. 1977).

24. *Feagin*, 192 Ga. at 873, 17 S.E.2d at 65.

25. *Id.* In civil matters inferior courts are equivalent to present day superior courts, "inferior in name only."

26. *Id.* The phrase of Justice O.W. Holmes comes to mind again: "Upon this point a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921).

27. See, e.g., *McCorkle v. Judges of Superior Court of Chatham County*, 260 Ga. 315, 316, 392 S.E.2d 707, 708 (1990). In dictum Justice Clarke, writing for the court stated, "We again speak a word of caution that the inherent power does not give the judicial branch the right to invade the province of another branch of government." *Id.*

28. 261 Ga. 570, 409 S.E.2d 30 (1991).

29. *Id.* at 574, 409 S.E.2d at 34.

30. *Id.* at 571, 409 S.E.2d at 31.

31. *Id.* at 570-71, 409 S.E.2d at 32.

temporary positions only after losing their initial legal challenge and learning from their legal counsel that the court was statutorily empowered to make the necessary expenditures.³² When the crisis was over and the judge attempted to make the positions permanent, however, the commissioners returned to court with a stronger case and won. Regardless of the judge's perceived needs, the supreme court held that he had usurped powers beyond his authority.³³ Citing *Grimsley*, the court noted that the inherent powers of the court must be exercised with caution when interfering with county government, and it also noted that inherent powers do not authorize indefinite appointments and expenditures that are otherwise matters delegated for decision by the general assembly to the governing authority of each county.³⁴

Judicial caution follows from an understanding that Georgia counties are essentially creatures of the state.³⁵ They deliver the day-to-day services that are planned, conceived, and defined by the general assembly. The counties administer general acts to the extent they apply to local unincorporated communities. As the primary conduit for delivery of state services and mandates, the county system began simply as a structure for the administration of state sovereignty³⁶ and for the apportionment of local representation in state government.³⁷

Initially, the administrative arm of the state ended in the hands of inferior court judges. Eventually, the general assembly removed the administrative duties of inferior judges and vested them in executive agents.³⁸ County governing authorities³⁹ were thus established on a

32. *Id.* at 571, 409 S.E.2d at 33.

33. *Id.* at 575, 409 S.E.2d at 35.

34. Judge Cramer violated a local act (1987 Ga. Laws 4527) strictly limiting the number of judges in Spalding County as well as several general laws pertaining to temporary judicial assistance. 261 Ga. at 573-74, 409 S.E.2d at 33-34.

35. See MARY A. HEPBURN, COUNTY GOVERNMENT IN GEORGIA 17 (2d ed. 1991); Troup County Elec. Membership Corp. v. Georgia Power Co., 229 Ga. 348, 352, 191 S.E.2d 33, 36 (1972) (counties are subdivisions of the state); Wood v. Gwinnett County, 243 Ga. 833, 257 S.E.2d 258, 259 (1979) (powers of counties, as creatures of state, strictly construed). See also COMMITTEE ON REVISION, *supra* note 6, at 4 (July 23, 1980) (comment of Mr. R. P. Sentell, Jr.). "If there is one fundamental cornerstone in local government law, it seems to me, it is this. Local governments, municipalities and counties are creatures of the State."

36. ALBERT BERRY SAYE, A CONSTITUTIONAL HISTORY OF GEORGIA, 1732-1945, 36 (1948).

37. *Id.* at 173. Following equal rights challenges to Georgia's methods of apportionment, this power has been removed from the county governing authority. O.C.G.A. § 36-5-22.1(a)(4) (1993) now reads simply "Reserved." See *Rogers v. Lodge*, 458 U.S. 613, *reh'g denied sub nom.*, *Lodge v. Buxton*, 459 U.S. 899 (1982).

38. See, e.g., AN ACT TO CREATE A BOARD OF COMMISSIONERS OF ROADS AND REVENUE IN THE COUNTY OF HARRIS (1869 Ga. Laws 170) creating Georgia's first governing

county-by-county basis in local acts passed by the general assembly.⁴⁰ Their power was strictly limited by law,⁴¹ and they were generally called commissioners of roads and revenues in recognition of their two most important priorities: 1) maintenance of the road system basic to transportation and communication; and 2) supervision of the state tax system which was, until the twentieth century, primarily a land tax system dependent on local appraisals, assessments, and collections. In 1968, as their role expanded, the term "commissioners of roads and revenues" was simplified statewide to the more general term "commissioners."⁴² At approximately the same time, the centralized general assembly was placing such a burden on the county structure that it seemed logical to adopt some form of home rule.

B. *The Home Rule Movement*

Home rule is both a political and a legal concept. As a political concept, it stands for local autonomy based on theories of government efficiency. As a legal concept, it stands for the method by which power is allocated between state and local governmental agencies to achieve the political goal of local autonomy. There are two general models for home

authority, copied in 1870 by Pike County (1870 Ga. Laws 447) in which the enumerated powers parallel the powers of inferior courts as defined in R.H. CLARK ET AL., *THE CODE OF THE STATE OF GEORGIA 76-78* (revised and corrected by David Irwin, Franklin Steam Printing House 1867).

39. County governing authority means the board of county commissioners, the sole county commissioner, or the governing authority of a consolidated government. O.C.G.A. § 1-3-3(7) (Supp. 1992).

40. See, e.g., AN ACT TO AMEND AN ACT CREATING THE OFFICE OF COMMISSIONER OF CHEROKEE COUNTY, APPROVED AUGUST 9, 1915 (1915 Ga. Laws 177), as amended, particularly by an act approved March 21, 1974 (1974 Ga. Laws 2534), so as to abolish the Board of Commissioners of Cherokee County and re-create the office of Commissioner of Cherokee County; to provide that all powers, duties and responsibilities formerly vested in the Board of Commissioners of Cherokee County shall be vested in the Commissioner of Cherokee County; . . . (1977 Ga. Laws 3029).

A local act is an act passed by the general assembly which applies only to a county or city and does not conflict with a general law, which applies statewide. For an interesting discussion of when local laws become constitutionally prohibited special laws, see R. PERRY SENTELL, JR., *When is a Special Law Unlawfully Special?*, 27 *MERCER L. REV.* 1167 (1976), reprinted in R. PERRY SENTELL, JR., *STUDIES IN GEORGIA LOCAL GOVERNMENT LAW* at 177 (3d ed. 1977).

41. "It is so well settled as to require no citation of authorities that the powers of county commissioners are strictly limited by law." *Turner v. Johnston*, 183 Ga. 176, 177, 187 S.E. 864, 864 (1936).

42. O.C.G.A. § 36-5-20 (1992).

rule: 1) Constitutional home rule, "*imperium in imperio*" (a state within a state);⁴³ and 2) legislative home rule.⁴⁴

Georgia's relatively recent adoption of home rule combines features of both general models.⁴⁵ A 1966 amendment to the Georgia Constitution grants broad, self-executing powers to counties;⁴⁶ but they are subject to prior general law and subsequent modification by the general

43. Constitutional home rule emphasizes local autonomy over central state control. It first appeared in the MO. CONST. of 1875, art. IX, § 20, as a way to facilitate the flexible development of St. Louis. In the leading case of *City of St. Louis v. Western Union*, 149 U.S. 465 (1893), the Missouri model was challenged as too restrictive of private industry. At issue was whether or not St. Louis could impose a rental charge on Western Union for the use of public property. Telegraph poles used by Western Union were installed, and therefore permanently occupied, in city street right-of-ways. No rental was charged by the state legislature for similar installations in road right-of-ways across the state. Because of practical concerns for laissez-faire economics and constitutional concerns about private industry regulation, the case went all the way to the United States Supreme Court. The private interests lost and the "*imperium in imperio*" phrase was coined to express the fundamental autonomy granted to local government under the constitutional home rule model. *Id.* at 468. The Court reasoned that the constitutional power to control the streets was granted directly by the people of Missouri to the City of St. Louis. *Id.* at 467. As such it was not delegated by the legislature and not subject to legislative preemption or interference. The City of St. Louis had plenary control over public areas. It was a "state within a state." *Id.* at 468. *Cf.* *DeKalb County v. Georgia Power Co.*, 249 Ga. 704, 705, 292 S.E.2d 709, 710 (1982) (noting that a valid state law precludes counties, but not municipalities, from charging for public utility rights-of-way).

44. John F. Dillon was one of the Western Union lawyers who argued against the validity of the Missouri Constitution's broad delegation of power. He favored strict limitation of all government, especially municipalities. *See generally* DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS (1911). The legislative home rule model is that sort of strictly-limited alternative. Based on as-needed, limited grants of power, it permits some local flexibility but always subject to legislative redefinition, preemption, and interference. In cases of doubt the delegated powers are strictly construed, by the courts if necessary, against the local government in favor of private or state interests. *See, e.g.*, 1 J. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS, 448-50 (5th ed. 1911). Dillon's Rule:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.

Id. *See generally* K.E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269 (1968).

45. *See generally* Ernie Hynds, *Home Rule in Georgia*, 8 MERCER L. REV. 337 (1957).

46. *See* GA. CONST. art. IX, § 2, para. 1 (1976).

assembly.⁴⁷ For example, Georgia counties have exclusive zoning powers to regulate land use⁴⁸ subject only to procedural requirements approved by the general assembly.⁴⁹ However, Georgia counties may not regulate the quality of manufactured homes by inspection ordinances. That privilege is preempted by a general law setting statewide standards for the manufactured homes industry.⁵⁰ Despite the constitutional form, Georgia's concept of home rule is therefore in line with the national trend toward the limitation of local autonomy in favor of state interests.⁵¹

The courts are not unmindful of the theories supporting home rule: participatory democratic republicanism, efficiency through public choice, pragmatic appreciation of decentralization, division of government labor, or institutional prioritization of the state legislature's time.⁵² However, none of these theories seems to have risen to a political priority in Georgia. By the time Georgia first enabled home rule in 1954, the complexities of American social-political-economic life made unfettered delegations of power to local governments risky. In place of cerebral aspirations for progressive government, the "lolly pop theory" of home rule prevailed.⁵³ It combines the sweet taste of victory with the palliative notion of candy for the baby, and the ultimate reality that lolly pops are not nutrition. The local governments seem to get what they want: "home rule!" However, home rule merely pacifies the local

47. See GA. CONST. art. IX, § 2, para. 1(a)-1(b) (1976).

48. See *Johnston v. Hicks*, 225 Ga. 576, 170 S.E.2d 410 (1969).

49. See *McClure v. Davidson*, 258 Ga. 706, 373 S.E.2d 617 (1988).

50. *Clayton County v. Otis Pruitt Homes, Inc.*, 250 Ga. 505, 299 S.E.2d 721 (1983). Otis Pruitt Homes successfully challenged a Clayton County home rule ordinance that authorized restrictive, independent inspection of factory built houses already approved by a state agency. *Id.* at 505, 299 S.E.2d at 722.

51. See generally K. E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269 (1968). The same message of generally restrictive court interpretations is made in the section on home rule in D. MANDELKER ET. AL., *STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM*, 110-42 (3d ed. 1990). But see contra Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643 (1964); accord *McCray v. Cobb County*, 251 Ga. 24, 302 S.E.2d 563 (1983) and the 1980 unpublished, but accurate, opinion of the Georgia Attorney General based on relevant case law. Op. Att'y Gen. No. U80-25 (1980). See, e.g., *Commissioners of Wayne County v. Smith*, 240 Ga. 540, 242 S.E.2d 47 (1978), *aff'g DeKalb County v. Atlanta Gas Light Co.*, 228 Ga. 512, 513, 186 S.E.2d 732, 734 (1972) (stating the general principle that a county can exercise no powers except as expressly given or necessarily implied).

52. Michael Libonati, *Home Rule: An Essay on Pluralism*, 634 WASH. L. REV. 51, 71 (1989).

53. Interview with Jeannie Hallmark, former Executive Director of the Pike County Chamber of Commerce (Mar. 17, 1993).

governments, who must still feed at the trough of the state. Similarly, local disputes are likely to be decided by the courts within the larger context of state government, and that context is likely to preempt local concerns.

III. COURT ACTIONS

Courts resolve disagreements by determining legality.⁵⁴ Therefore, the most successful court actions are based on strict textual, constitutional validations of authorizing statutes and statutory preemptions of local regulations. Challenges based on general constitutional and statutory powers are less reliable. Legal remedies for money damages are generally inappropriate because these challenges are all ultimately about the limits of power. Therefore, potential litigants involved in local government disputes, even over county budget allocations, generally get into court by filing actions in equity. Apart from complaints presenting constitutional questions, the extraordinary writ of mandamus⁵⁵ is probably the most popular cause of action.⁵⁶ Other potential actions are injunction,⁵⁷ declaratory judgment,⁵⁸ and simple equity.

A. Constitutional Questions

Challenges to local government conduct properly based on specific text in the state constitution generally succeed. The Georgia courts themselves rely on express constitutional authority to invalidate laws that violate the constitution.⁵⁹

A recent case, *Fulton v. Baker*,⁶⁰ brought the supreme court's attention to the constitutional proscription on bills of attainder.⁶¹ In

54. Board of Comm'rs of Fulton County v. 1991 Tax Digest for Fulton County, 261 Ga. 702, 703, 410 S.E.2d 721, 722 (1991).

55. O.C.G.A. § 9-6-21 (1992).

56. See R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW 1 (1989).

57. O.C.G.A. § 9-5-1 (1992).

58. *Id.* § 9-4-2.

59. "Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." GA. CONST. art. I, § 2, para. 5 (1983).

60. 261 Ga. 710, 410 S.E.2d 735 (1991).

61. *Id.* at 711, 410 S.E.2d at 736; GA. CONST. art. I, § 1, para. 10; U.S. CONST., art. I, § 10, cl. 1. A bill of attainder is a retroactive law making judgment and imposing punishment, historically for treason, now for any disloyal activity (*Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 475 (1977)) on an individual, or narrowly defined group, without the benefit of judicial proceedings. *United States v. Lovett*, 328 U.S. 303, 315 (1946). See also *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603 (1813) and 18th century Virginia laws confiscating lands of British traitors.

January of 1991, one of three Douglas County commissioners died, creating a vacancy on the board. The two other commissioners appointed Laurie Fulton to fill the vacancy on February 11. A local act⁶² was introduced in the general assembly on February 12 to make temporary any person appointed to fill a vacancy in Douglas County between January 1, 1991 and February 25, 1991. The only person fitting the criteria of the act was Laurie Fulton. "The local act, not a court of law, mandates that Fulton forfeit her office."⁶³ As such it fits the definition of a bill of attainder and is unconstitutional.⁶⁴ Given the clear constitutional basis for the challenge, the supreme court was unfazed by the local political considerations; and Commissioner Fulton prevailed.⁶⁵

B. Legislative Preemption

For county officials, the biggest courtroom reality is legislative preemption. More than any other doctrine of decision, legislative preemption, or deference to a co-equal branch of government, is a court's way of resolving local government disputes without getting involved in them. The hierarchy of state law is also based on express constitutional authority.⁶⁶

In *Mobley v. Polk County*,⁶⁷ a general act controlled the hours of operation of the county courthouse.⁶⁸ The supreme court held in part⁶⁹ that the Polk County Commissioners, having the legislative duty "to keep the county courthouse and the county offices maintained therein open," therefore had the power to require the tax commissioner to keep

62. 1991 Ga. Laws 3501-02.

63. *Fulton*, 261 Ga. at 712, 410 S.E.2d at 737.

64. *Id.* at 710, 410 S.E.2d at 735.

65. *Id.* at 713, 410 S.E.2d at 737-38.

66. "The power granted to counties . . . shall not be construed to extend to . . . any other matters which the General Assembly by general law has preempted or may hereafter preempt, but such matters shall be the subject of general law or the subject of local acts . . ." GA. CONST. art. IX, § 2, para. 1(c).

67. 242 Ga. 798, 251 S.E.2d 538 (1979).

68. *Id.* at 779, 251 S.E.2d at 540.

69. The other part of the holding upheld the principle, also enunciated in *Warren v. Walton*, that the home rule grant of authority to the county commissioners was expressly excluded from reaching to the conduct of constitutionally protected officers, in this case the Polk County Tax Commissioner. *Mobley*, 242 Ga. at 802, 251 S.E.2d at 541. For an earlier decision on exempt county officers see *Warren v. Walton*, 231 Ga. 495, 202 S.E.2d 405 (1973).

his office open from 9 a.m. to 5 p.m.⁷⁰ The local act preempted setting independent office hours at each county officer's preference.⁷¹

The case of *Hart v. Madden*⁷² turned on whether a county practice, started in the 1970s, was authorized by a local act or preempted by the constitution of 1983.⁷³ The particular question was whether the language of the constitution, allowing county governing authorities to supplement the compensation of county officers, includes the authority to pay health insurance premiums for those officers.⁷⁴ A local act established the Madison County governing authority in 1965 with plenary powers over county matters.⁷⁵ Given that political reality, the majority decided without further comment that the constitutional grant of county home rule, in combination with the local act, was persuasive of the general assembly's intent to authorize the insurance payments. The local practice was not preempted.⁷⁶

The dissent cited a Dillon's Rule case⁷⁷ against broad delegation of local power in line with the concerns of the 1980 committee responsible for redrafting the home rule section of the 1983 Georgia Constitution.⁷⁸ This split decision suggests that actions challenging broad home rule delegations might succeed if particular conduct can be framed against recognized state interests.

70. O.C.G.A. § 36-1-12 (1992).

71. *Mobley*, 242 Ga. at 801, 251 S.E.2d at 541.

72. 256 Ga. 497, 349 S.E.2d 737 (1986).

73. *Id.* at 497-98, 349 S.E.2d at 737-38.

74. *Id.* "Minimum compensation for said county officers may be established by the General Assembly by general law. Such minimum compensation may be supplemented by local law or, if such authority is delegated by local law, by action of the county governing authority." GA. CONST. art. IX, § 1, para. 3 (b) (1976).

75. 1965 Ga. Laws 2667.

76. 256 Ga. at 498, 349 S.E.2d at 738.

77. 256 Ga. at 498, 349 S.E.2d at 738 (Clark, J., dissenting) (citing *Beazley v. DeKalb County*, 210 Ga. 41, 77 S.E.2d 740 (1953) (*Beazley* was decided before adoption of the 1966 Home Rule for Counties amendment to the Georgia Constitution.)) For Dillon's Rule, see *supra* note 44.

78. While the Subcommittee on County and Municipal affairs actually decided to reverse the Dillon's Rule presumption (COMMITTEE ON REVISION, *supra* note 6, at 30 (July 9, 1980)), and the SUBCOMMITTEE ON LOCAL GOVERNMENT REORGANIZATION agreed (COMMITTEE ON REVISION, *supra* note 6, at 33-41 (June 23, 1980)), a conflicting consensus in favor of legislative preemption of local salary determination was also reached rather than risk constitutional language that would permit a local governing authority to control constitutional county officers with the power of the purse. STATE OF GEORGIA SELECT COMMITTEE ON CONSTITUTIONAL REVISION 1977-1981, TRANSCRIPTS OF MEETINGS, COMMITTEE TO REVISE ART. IX, VOL. 2, SUBCOMMITTEE ON LOCAL GOVERNMENT ORGANIZATION, REORGANIZATION AND GENERAL CONCERNS 113-26 (Oct. 30, 1980).

Classic legislative preemption is illustrated by *McCorkle v. Bignault*.⁷⁹ The issue in *McCorkle* was payment of indigent defense bills in Chatham County.⁸⁰ The court found that Chatham County had the options of participating, or not, in the state-funded indigent defense program established by the Georgia Indigent Defense Act.⁸¹ The Act established procedures for approving fee payments independently of the Chatham County Commission Chairman. Once the County signed on to the program, it was preempted from interposing the local county custom "of having the chairman of the board [of commissioners] review and approve all requests for county funds in excess of \$999 prior to their disbursement."⁸² Thus, the courts relied on a legislative act specifying procedures that preempted alternate county customs.

C. *Mandamus*

When a local official claims that the duties appertaining to their office are thwarted by another official's failure to act, or by such limited acts as amount to no action at all, mandamus is the correct remedy.⁸³ Mandamus is essentially a request to the courts to enforce a clear legal right, demanded against a defendant,⁸⁴ who has refused to act.⁸⁵ Characterized as an extraordinary writ, it is a way to "jump start" the government.

In *Grimsley v. Twiggs County*,⁸⁶ the court established a test for the proper use of mandamus: 1) there must be a compelling need essential to the orderly administration of the [office seeking relief]; 2) there must be an abuse of authority in refusing to act; 3) both 1 and 2 must be based on clear and convincing evidence; 4) a record must be made establishing that a demand had been made and refused; and 5) in review, a rational trier of fact would find clear and convincing evidence

79. 260 Ga. 758, 399 S.E.2d 916 (1991).

80. *Id.* at 759, 399 S.E.2d at 917.

81. *Id.* at 760, 399 S.E.2d at 918. See 1979 Ga. Laws 367; O.C.G.A. §§ 17-12-30 to -92 (Supp. 1994).

82. *McCorkle*, 260 Ga. at 760, 399 S.E.2d at 917.

83. *Grimsley*, 249 Ga. at 632, 292 S.E.2d at 675.

84. The inquiry is not into the power of the official, but rather into the official's act or failure to act according to a legally imposed duty. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803).

85. O.C.G.A. § 9-6-20 (1992); see also R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW 7-21 (1989).

86. 249 Ga. 632, 292 S.E.2d 675 (1982) (applying the writ of mandamus to remedy budgetary restrictions imposed by county governing authorities over separate branches of local government).

to support the issuance of the writ.⁸⁷ The high level of proof needed to pass this clear and convincing standard favors the defendant in mandamus actions.

Professor Sentell estimates two out of three cases are decided against the plaintiff.⁸⁸ Potential litigants should be aware of the following pitfalls: 1) failure to sue the correct person legally responsible for the performance of the required act; 2) failure to prove that the purported duty is strictly within the defendant's sphere of responsibility; 3) failure to state a clear legal right; 4) failure to prove that a request or demand has in fact been made and refused; 5) failure to seek an alternative available remedy; 6) failure to recognize that relief as requested would be futile; 7) failure to understand that discretion is practically a bar against the use of mandamus unless abuse of discretion is so gross as to amount to no discretion at all; 8) failure to understand that mandamus will force an official to act but with no guarantee as to result; 9) failure to limit relief to a specific act as opposed to a general course of conduct; 10) failure to recognize that elapsed time may make the remedy sought too speculative to be enforceable by the courts; and 11) lack of "clean hands."⁸⁹ Avoiding these pitfalls is not a guarantee of success, but it improves the chances for a decision based on the merits of one's case.

D. Injunction

Intragovernment injunctions seek court orders to stop particular conduct, and are generally linked to both constitutionally and statutorially based challenges. In the case of *Peacock v. Georgia Municipal Ass'n*,⁹⁰ a group of police officers and civilians filed a constitutional challenge to halt the lobbying activities of the Georgia Municipal Association and the Association of County Commissioners of Georgia.⁹¹ They contended that the two organizations were funded primarily by dues collected as tax revenues under both the constitution and statutes of Georgia, but that neither the constitution nor the statutes authorized lobbying as a legitimate purpose for tax collection. They asked for an injunction to stop the two organizations from conducting lobbying activities and from using tax revenues to support those activities.⁹²

87. *Id.* at 634, 292 S.E.2d at 677-78.

88. R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW 31 (1989).

89. This list is derived from R. PERRY SENTELL, JR., MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW (1989).

90. 247 Ga. 740, 279 S.E.2d 434 (1981).

91. *Id.* at 740, 279 S.E.2d at 436.

92. *Id.*

The supreme court first found that the activities complained of were not in fact lobbying, and second, that tax collection for the kind of activities in which the two organizations were engaged was a legitimate public purpose connected with the administration of local governments.⁹³ The constitutional and statutory bases for the challenge therefore failed, and the court denied the injunction.⁹⁴

By flipping the perspective, an injunction to stop conduct can have the effect of compelling the opposite conduct. Such was the case in *Chaffin v. Calhoun*,⁹⁵ in which an injunction was eventually issued to stop the sheriff from resisting the board of commissioners' reallocation of law enforcement personnel and equipment.⁹⁶ In effect the sheriff was given two days to turn over personnel and equipment in compliance with the court order.⁹⁷

E. Declaratory Judgment

Local government actions for declaratory judgments are generally framed in terms of constitutional validity. For example, in *Bussell v. Youngblood*,⁹⁸ the Laurens County sheriff sought a declaratory judgment validating a local act.⁹⁹ The act called for budget proposals to be submitted to the county commissioners and conflicting proposals to be finally resolved by the county grand jury. Both parties complied with the requirements of the act and the grand jury decided in favor of the sheriff. When the sheriff challenged the county commissioners to abide by the grand jury determination, they countersued asking the court for a declaratory judgment invalidating the local act. The superior court held that the local act purporting to grant special duties to the Laurens County Grand Jury conflicted with, and was therefore precluded by, a general act defining grand juries.¹⁰⁰ Citing the constitutional prohibi-

93. *Id.* at 741, 279 S.E.2d at 436.

94. *Id.* at 743, 279 S.E.2d at 437.

95. 262 Ga. 202, 204, 415 S.E.2d 906, 908 (1992).

96. *Id.* at 204, 415 S.E.2d at 908.

97. *Chaffin v. Calhoun*, No. 91-CV-0334 and *Calhoun v. Chaffin*, No. 91-CV-0716 at 84 (Sup. Ct. Henry County, May 31, 1991). A temporary restraining order was first issued by Judge Castellani to stop the transfer of police personnel and equipment from the sheriff's department to the county police pending the final determination of the respective rights of the board of county commissioners and sheriff in the allocation of county law enforcement resources. The order was granted on March 18, 1991 as an interlocutory injunction, in the case of *Chaffin v. Calhoun*, No. 91-CV-0334 Sup. Ct. Henry County, March 13, 1991.

98. 239 Ga. 553, 238 S.E.2d 89 (1977).

99. *Id.* at 554, 238 S.E.2d at 91; *see also* 1960 Ga. Laws 2199.

100. *Bussell*, 239 Ga. at 554, 238 S.E.2d at 91.

tion against special laws that conflict with general laws,¹⁰¹ the supreme court affirmed.¹⁰² The sheriff lost.¹⁰³

F. Equity

Actions in equity are simply actions based on fairness for which no legal remedy exists. These actions may or may not include the more specific actions of mandamus or injunction. For example, in *McCorkle v. Bignault*,¹⁰⁴ the Chairman of the Board of Commissioners in Chatham County erroneously believed that he could veto any expenditures greater than \$999 because that was how it had always been done.¹⁰⁵ The chairman halted indigent defense payments to four attorneys who had submitted bills conforming to the standard procedures established by the Georgia Indigent Defense Act¹⁰⁶ and subscribed to by Chatham County.¹⁰⁷ The superior court judge properly denied an action for mandamus to force the errant chairman to pay the submitted bills. Approval of the bills was beyond his authority.¹⁰⁸ Mandamus failing, equity was all that remained. Since Georgia courts discourage judgments based on technicalities rather than merit,¹⁰⁹ and because the Chatham chairman next attempted to have the judge recuse himself, the action was allowed to continue in general equity.

The judge then joined the attorneys' case with another action seeking injunctive relief against the chairman's ability to personally approve or disapprove of requests for indigent defense fees.¹¹⁰ Deciding for the

101. "Laws of a general nature shall have uniform operation throughout the state, and no special law shall be enacted in any case for which provision has been made by existing law." GA. CONST. art. I, § 2, para. 7 (which was slightly altered in the GA. CONST. 1983 to read "Laws of a general nature shall have uniform operation throughout the state and *no local or special law shall be enacted in any case for which provision has been made by general law, . . .*" GA. CONST. art. II, § 6, para. 4(a) (emphasis added).

102. *Bussell*, 239 Ga. at 555, 239 S.E.2d at 91.

103. In the sequel case, the sheriff also lost an action for an injunction on review of the budget in which the supreme court struck down as an unconstitutional delegation of authority from the sheriff's department to the Dublin Police Department, an attempt to contractually tie the sheriff's deputies' salaries to the pay scale of similarly qualified officers in the Dublin Police Department. *Lovett v. Bussell*, 242 Ga. 405, 249 S.E.2d 86 (1978).

104. 260 Ga. 758, 399 S.E.2d 916 (1991).

105. *Id.* at 761, 399 S.E.2d at 918.

106. O.C.G.A. §§ 17-12-30 to -92 (Supp. 1994).

107. *McCorkle*, 260 Ga. at 759, 399 S.E.2d at 916.

108. Mandamus actions will not lie to enforce an action that is not within the legal duties of the defendant. See *supra* note 84 and accompanying text.

109. See *Russell v. Smokerise Bath & Racquet Club*, 243 Ga. 724, 728, 256 S.E.2d 457, 460 (1979) (Hill, J., concurring).

110. *McCorkle*, 260 Ga. at 760, 399 S.E.2d at 917.

attorneys, the trial judge held the chairman personally responsible for the invoices he had blocked.¹¹¹ Affirming the trial court's decision in part, the supreme court held that mere custom is insufficient to overcome the requirements of a general law.¹¹² Thus, this action in equity was eventually resolved on the doctrine of legislative preemption. *McCorkle* is a rare example of dollar damages being awarded in a local government dispute.¹¹³

IV. DOUBLE DEFERENCE AND THE CONCEPT OF DISCRETION

The American adversarial system of court law is at its best when resolving particular cases and controversies. The system thrives on particular facts to focus competing social interests. Procedural perfection helps smooth the way.¹¹⁴ Procedural error may prevent reaching the merits.¹¹⁵ Actions based on the constitutionality of general or local acts are decided on state policy grounds regardless of local politics. When the action is based on mere disagreement, however, the courts adopt a hands-off policy. County administrative officers in charge of county affairs have broad discretion,¹¹⁶ and the power of the courts to review local conduct is exercised with caution.¹¹⁷ Thus, when litigation becomes inevitable, the challenger of the status quo is at a considerable disadvantage. The courts view county government as a co-equal branch of government whose problems are properly the problems

111. *Id.* at 761, 399 S.E.2d at 918.

112. *Id.* at 760, 399 S.E.2d at 917.

113. *Id.*

114. It is not my intention to minimize the importance of procedural perfection when surveying how best to use the courts to resolve local government disputes. It is, however, beyond the scope of this Article because procedural rules tend to vary more rapidly than substantive law (*see, e.g.*, R. PERRY SENTELL, JR., *THE WRIT OF QUO WARRANTO IN GEORGIA LOCAL GOVERNMENT LAW* 86-106 (1987)) and because practicing attorneys are bound to know the required procedures applicable in each jurisdiction.

115. In an extreme effort to avoid local politics, the Georgia Supreme Court considered a zoning case in which the plaintiff claimed a right to a building permit since he had complied with the relevant county ordinance. The court held that plaintiff's failure to present the material county ordinance at trial was a fatal error in establishing a clear legal right to the remedy sought. *Hernandez v. Board of Comm'rs*, 242 Ga. 76, 247 S.E.2d 870 (1978). *See also* R. PERRY SENTELL, JR., *MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW* 109 (1989) placing *Hernandez* in historical context.

116. *Turner v. Johnston*, 183 Ga. 176, 187 S.E. 864 (1936), *cited with approval in Nelson v. Wainwright*, 224 Ga. 693, 694, 164 S.E.2d 147, 148 (1968).

117. *See, e.g.*, *Lumpkin County v. Davis*, 185 Ga. 393, 195 S.E. 169 (1938) (a case reviewing conduct of a sheriff in which the court held mandamus "does not lie to control the conduct of officials, as in this case, vested with a discretion, except . . . gross abuse of discretion" *Id.* at 394, 195 S.E. at 170-71.).

of the legislature. Actions based on discretionary conduct require court interference with local government. Therefore, as an overarching principle, the courts have adopted a double deference standard to avoid issues of local politics.¹¹⁸ At the trial level, the courts will only interfere when local officials' actions, based on a clear wrong, amount to an abuse of discretion.¹¹⁹ Additionally, the appellate courts only interfere with the trial court's conclusions if a clear wrong amounting to an abuse of discretion at trial exists.¹²⁰

In the extremely political case of *Chaffin v. Calhoun*,¹²¹ two local judges recused themselves from the hearings. The judges feared they could not possibly decide in favor of the sheriff without jeopardizing their own future budgetary requests before the Henry County Board of Commissioners.¹²² The case was therefore heard in DeKalb County by special arrangement. The trial court found in favor of the defendants based on evidence in support of the county commissioners' plans to establish a county police force.¹²³ On direct appeal to the supreme court,¹²⁴ the court applied a deferential standard of review to the defendants' discretionary conduct and the trial court's evaluation of that conduct.¹²⁵ This double deferential standard makes winning or losing at the trial level nearly conclusive as to the parties' rights. The merits are not generally up for relitigation on appeal or certiorari.

In *Wilson v. Southerland*,¹²⁶ the issue was judicial review in the context of a budgetary conflict between the district attorney of the

118. For a selective review of the early cases see R. PERRY SENTELL, JR., *MISCASTING MANDAMUS IN GEORGIA LOCAL GOVERNMENT LAW* 88-90 (1989) where the author, citing *Wood v. Board of Educ. of Washington County*, 137 Ga. 808, 74 S.E. 540 (1912), states that "the court indicated, at least, an ingrained aversion to a substantial review of [the] evidence, and assuredly to a minute weighing of the details." In a case seeking court review of the orientation of the Chatsworth Courthouse in Murray County, the court stated, "It is impossible, in our complex civilization, to prescribe the exact manner in which every official act must be performed." *Dunn v. Beck*, 144 Ga. 148, 152, 86 S.E. 385, 387 (1915).

119. See, e.g., *Whatley*, 224 Ga. at 670, 164 S.E.2d at 122. "This court will not interfere with the discretionary action of the county commissioners within the sphere of their legally delegated powers, unless such action amounts to an abuse of discretion." (quoted favorably in *Fulton County v. 1991 Tax Digest*, 261 Ga. 702, 703, 410 S.E.2d 721, 721 (1991)).

120. *Chaffin*, 262 Ga. at 204, 415 S.E.2d at 908.

121. *Id.* at 202, 415 S.E.2d at 906.

122. Personal Interview with Donald Chaffin, Sheriff of Henry County (Apr. 13, 1993).

123. *Chaffin v. Calhoun*, No. 91-CV-0334 and *Calhoun v. Chaffin*, No. 91-CV-0716 at 78 (Sup. Ct. Henry County, May 31, 1991).

124. *Chaffin*, 262 Ga. at 202, 415 S.E.2d at 906. The Supreme Court of Georgia has appellate jurisdiction on all cases in equity. GA. CONST. 1983, art. VI, § 6, para. § (2). Direct appeal is authorized under O.C.G.A. § 5-6-34(a)(4) (Supp. 1994).

125. *Chaffin*, 262 Ga. at 204, 415 S.E.2d at 908.

126. 258 Ga. 479, 371 S.E.2d 382 (1988).

Cherokee Circuit and the Gordon County Commissioners.¹²⁷ In 1986 the district attorney's office operated, in part, under a Gordon County budget of \$48,118. For 1987, the district attorney submitted a budget request to Gordon County of \$72,333. The Gordon County Commissioners cut the request to \$7,700, and the court refused to interfere.¹²⁸ The county governing authority has statutory authority over government oversight,¹²⁹ including the duty to inspect the county budget.¹³⁰ Although the standard for review of this authority is the deferential "abuse of discretion" standard,¹³¹ an eighty-eight percent reduction in the district attorney's budget would appear to be an "abuse of discretion."¹³² However, the supreme court found no trial court error in light of the cautionary policy when reviewing the conduct of another branch of government.¹³³ Justice Clarke noted, "[T]his conclusion does not dictate that a different result in the trial court would necessarily have been error."¹³⁴

A recent example of the supreme court's reluctance to invade a local government's sphere of power is *Board of Commissioners of Fulton County v. 1991 Tax Digest for Fulton County*.¹³⁵ In *Board of Commissioners*, the court affirmed the trial court's order for temporary collection of real property taxes.¹³⁶ However, the court reversed the part of the order requiring the county commission to justify the wisdom of proposed county expenditures. Justification of discretionary acts was found beyond the scope of an "abuse of discretion" review of local government conduct.¹³⁷ Potential litigants over budget disagreements should

127. *Id.* at 479, 371 S.E.2d at 382-83.

128. *Id.*

129. O.C.G.A. § 36-5-22.1(7) (1992).

130. *Board of Comm'rs of Richmond County v. Whittle*, 180 Ga. 166, 178, 202 S.E. 534 (1934).

131. *Dunn v. Beck*, 144 Ga. 148, 86 S.E. 385 (1915).

132. In a 1991 Pike County action to dismiss the county attorney in a dispute between the county tax commissioner and the governing authority, Judge Andrew Whalen was given case law limiting the defendant's right to probe the relationship between the county attorney and the opposing parties. He read it at the bench, looked at opposing counsel who said that the offered case was hard to reconcile with the general rule and said, "I don't understand it either; but apparently that's the law." And the point was won by the plaintiff. *Pike County v. Reid*, 91V-117 (1991) (personal recollection).

133. *Wilson*, 258 Ga. at 480-81, 371 S.E.2d at 384.

134. *Id.* at 481, 371 S.E.2d at 384.

135. 261 Ga. 702, 410 S.E.2d 721 (1991).

136. *Id.* at 702, 410 S.E.2d at 721.

137. *Id.* at 702-03, 410 S.E.2d at 721.

beware. The lesson of local government law in Georgia is the courts will not oversee county management.¹³⁸

V. COURT CASE RESOLUTIONS OF GENERAL DISAGREEMENTS

Four cases, *Warren v. Walton*,¹³⁹ *Wolfe v. Huff* ("Wolfe I"),¹⁴⁰ *Wolfe v. Huff* ("Wolfe II"),¹⁴¹ and *Chaffin v. Calhoun*,¹⁴² each involving a dispute between county commissioners and sheriffs, illustrate how the courts resolve general county power disputes. These cases arise partially out of a paradox¹⁴³ built into the home rule article of the Georgia Constitution¹⁴⁴ and partially out of competing duties defined by

138. *Id.* at 703, 410 S.E.2d at 721.

139. 231 Ga. 495, 202 S.E.2d 405 (1973).

140. 232 Ga. 44, 205 S.E.2d 254 (1974).

141. 233 Ga. 162, 210 S.E.2d 699 (1974).

142. 262 Ga. 202, 415 S.E.2d 906 (1992).

143. Perhaps the simplest paradox is the so-called Socrates Paradox, "This statement is false." Two statements, plausible in isolation, may create a paradox when combined. For example, "Eggs come before chickens" and "Chickens come before eggs." Each is plausible on its own, but combined, one contradicts the other. The contradiction is resolved only by strictly limiting or invalidating one or both statements.

Law is a logical system; logical systems yield paradoxes. Identifying and solving paradoxes develops a better system. *But Cf.*, "The life of the law has not been logic, it has been experience." O.W. HOLMES, *THE COMMON LAW* (1881)

In the great run of cases which come before the courts, the selection of principles, and the determination of whether the facts are to be stated in terms of one or another minor premise, are the chief tasks to be performed. These are difficult tasks, full of hazards and uncertainties, but the hazards and uncertainties are ordinarily concealed by the glib use of formal logic.

J. FRANK, *LAW AND THE MODERN MIND* 72 (1963).

144. GA. CONST. art. IX, § 2, para. 1 (1983). This paradox is based on two clauses in the home rule article of the Georgia Constitution.

The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto This, however, shall not restrict the authority of the General Assembly by general law to further define this power or to broaden, limit, or otherwise regulate the exercise thereof.

GA. CONST. art. IX, § 2, para. 1(a)-(b) (1983).

The power granted to counties . . . shall not be construed to extend to the following matters . . . (1) Action affecting any elective county office (i.e., sheriff, probate judge, clerk of the superior court, and tax commissioner, or tax receiver and tax collector, specifically enumerated in GA. CONST. 1983, art. IX, § 1, ¶ 3) the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority.

GA. CONST. art. IX, § 2, para. 1(c)(1) (1983). These two clauses combine to grant county governing authorities the power to control officers who are expressly exempt from just such

statute.¹⁴⁵ In general, the county governing authority has primary responsibility for overseeing all county governments. Other county offices have independent responsibility for particular services.¹⁴⁶ For example, the governing authority has statutory control over the sheriff's budget.¹⁴⁷ The sheriff is responsible for the successful operation of his office which depends on county funding. Apart from the general act establishing minimum sheriff's compensation,¹⁴⁸ funding the sheriff's office currently depends on goodwill, enlightened self interest, political muscle, or a local act. The same conditions exist between each of the county officers and the county governing authority. The tension created by these conditions arguably poses a political, not a legal question.

In *Warren v. Walton*,¹⁴⁹ the court concluded that some county offices are beyond the control of the county governing authority.¹⁵⁰ The sheriff of Hancock County filed a mandamus action to force the county commissioners to furnish him with two radio equipped automobiles. He claimed these were necessary for the performance of his duties as keeper of the peace.¹⁵¹ Basing his complaint on a local act passed by the general assembly, the sheriff prevailed at the trial hearing. The commissioners relied heavily on a defense that the local act directed their conduct—in violation of the constitution. They claimed the home rule clause grants the governing authority discretionary power to all county property. Furthermore, they intended to exercise their plenary discretionary powers by repealing the offending sections of the local act, including the part that authorized the sheriff to appoint a chief deputy and three other deputies at specified salaries. Faced with this answer, the sheriff filed two additional petitions. One petition was filed to

control.

145. For a list of the applicable code sections, see appendix I.

146. See, e.g., *Mobley*, 242 Ga. at 802, 251 S.E.2d at 541 (1978).

No matter how desirable uniformity of work regulations of various employees, of various county offices in the seat of government may be, county commissioners as the governing authority of the fiscal affairs of Polk County do not have authority, express or implied, to establish work regulations for employees of another elected county officer.

Id. See also appendix I, below, for relevant code references together with GA. CONST. of 1983, art. IX and local acts; J.D. WEEKS & P.T. HARDY, HANDBOOK FOR GEORGIA COUNTY COMMISSIONERS 66 (3d ed. 1993).

147. See O.C.G.A. § 36-5-22.1 (1993) (sheriff's budget subject to authority of county commission) and O.C.G.A. § 48-5-220(5) (1991) (county taxes may be levied and collected to pay sheriffs).

148. O.C.G.A. § 15-16-20 (1994).

149. 231 Ga. 495, 202 S.E.2d 405 (1973).

150. *Id.* at 499-500, 202 S.E.2d at 409.

151. *Id.* at 496, 202 S.E.2d at 407.

compel the commissioners to pay the salaries and the other to enjoin them from repealing the act. The commissioners relied on an additional clause in the home rule article of the constitution that authorizes the governing authority of each county "to fix the salary, compensation, and expenses of those employed by such governing authority."¹⁵²

The controlling issue was whether the constitution prohibited the general assembly from enacting a local law expressly authorizing the Hancock County Sheriff: 1) to have two radio equipped patrol cars for the use of his deputies, and 2) to appoint a chief deputy sheriff and three other deputies sheriffs at specified salaries not to exceed \$7,000 and \$6,000 respectively.¹⁵³ Given the constitutional challenge, the supreme court looked first at the Hancock County Commissioners' home rule source of authority "to fix the salary."¹⁵⁴ The court found this section inapplicable to control an elected and constitutionally protected sheriff because of the special exemption for elective county officers in paragraph I(c)(1) of the same article.¹⁵⁵ Writing for the court, Justice Grice stated that "the office of sheriff is specifically exempt from Home Rule."¹⁵⁶ He affirmed the established rule that the sheriff is not an employee of the county governing authority,¹⁵⁷ home rule notwithstanding, and he thus integrated the relatively modern home rule provisions into established case law.¹⁵⁸ The local act, surviving the constitutional challenge, authorized the sheriff's conduct and directed the county commissioners to provide the patrol cars and pay the indicated salaries.¹⁵⁹ Having determined that the county commissioners' role was strictly ministerial,

152. *Id.* at 498, 202 S.E.2d at 408 (quoting GA. CONST. art. IX, § 2, para. 1(f) (1983), formerly GA. CONST. art. XV, § 2(a), para. 2 (1977)).

153. *Id.* at 496, 498, 202 S.E.2d at 406-08 (citing 1973 Ga. Laws 3237).

154. *Id.* at 498-99, 202 S.E.2d at 408 (quoting GA. CONST., art. XV, § 2-A, para. 2 (1977) which language is identical to GA. CONST., art. IX, § 2, para. 1(f) (1983)).

155. *Id.* at 499, 202 S.E.2d at 408 (citing Ga. CONST. art. XV, § 2-A, para. 1(c)(1) (1977) (which language is identical to GA. CONST., art. IX, § 2, para. 1(c) (1) (1983)).

156. 231 Ga. at 499, 202 S.E.2d at 408.

157. *Id.* at 500, 202 S.E.2d at 409; see *Truesdel v. Freeney*, 186 Ga. 288, 197 S.E. 783 (1938).

158. *Id.* Likewise, and by analogy, the entire pre-home rule body of case law relating to other local government conflicts was left intact and remains persuasive. See also *Stephenson v. Board of Comm'rs of Cobb County*, 261 Ga. 399, 405 S.E.2d 488 (1991) and *Board of Comm'rs of Randolph County v. Wilson*, 260 Ga. 482, 396 S.E.2d 903 (1990), both of which cite with approval cases that pre-date the 1966 Home Rule Amendment. The line of cases defining what a county officer is and whether a particular office is subject to the power of the county governing authority dates back at least as far as *Polk v. James*, 68 Ga. 128 (1881), and many of the relevant cites are included in *Employees Retirement Sys. v. Lewis*, 109 Ga. App. 476, 136 S.E.2d 518 (1964).

159. 231 Ga. at 500, 202 S.E.2d at 409-10.

the supreme court found no error in the trial court's conclusion that mandamus was the appropriate remedy.¹⁶⁰ The sheriff thus won at the trial and appellate levels.

*Wolfe I*¹⁶¹ involved an injunction by the sheriff of Clarke County to preclude the commissioners from establishing a county police force.¹⁶² Basing his complaint on the common law heritage of the sheriff's office¹⁶³ and on his duties as defined by statute,¹⁶⁴ the sheriff was granted some relief, "but not very much."¹⁶⁵ The sheriff retained his right to participate in the preservation of the peace and enforcement of the laws, and the commissioners were enjoined from denying cooperation between the county police force and the sheriff's department. However, the commissioners gained the right to reallocate county resources when other county officers used them in wasteful, negligent, or ineffective ways.¹⁶⁶ Writing for the full court, Justice Gunter stated that the "trial judge attempted to harmonize the conflicting claims . . . in a most reasonable manner."¹⁶⁷

*Wolfe II*¹⁶⁸ followed *Wolfe I* and addressed the commissioners' counterclaim. In *Wolfe II* the trial court held that a county governing authority may not indirectly limit the duties of another county office if the same action is illegal when done directly.¹⁶⁹ The commissioners did win the right to establish a county police force in partial derogation of the sheriff's law enforcement capacity,¹⁷⁰ although refusal to provide the sheriff with any funds for law enforcement duties was found a complete abrogation of the commissioners' executive duty to use discretion in managing the county budget.¹⁷¹ County commissioners may not use their authority over both the county budget and county property to avoid cooperating with other county officers.¹⁷² Implicitly,

160. *Id.*, 202 S.E.2d at 410.

161. 232 Ga. 44, 205 S.E.2d 254 (1974).

162. *Id.* at 44-45, 205 S.E.2d at 255.

163. See *Elder v. Camp*, 193 Ga. 320, 322, 18 S.E.2d 622, 625 (1942) (holding in part that the sheriff's duties include common law duties except as modified by statute including the duty "to preserve the peace") cited favorably in *Foster v. Vickery*, 202 Ga. 55, 60, 42 S.E.2d 117, 120 (1947).

164. O.C.G.A. § 15-16-10(a)(8) (1994). "To perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office." *Id.*

165. *Wolfe*, 232 Ga. at 45, 205 S.E.2d at 255.

166. *Id.* at 46, 205 S.E.2d at 255-56.

167. *Id.* at 47, 205 S.E.2d at 256.

168. 233 Ga. 162, 210 S.E.2d 699 (1974).

169. *Id.* at 163, 210 S.E.2d at 700.

170. *Id.* at 163-64, 210 S.E.2d at 700.

171. *Id.*

172. *Id.*

all county officers exercise complementary powers for the administration of government. An abuse of discretion by the county commissioners that ignores the contribution of another county office is contrary to state interest and appropriately remedied by the courts.¹⁷³

Recently, the supreme court revisited the issue of county cooperation in *Chaffin v. Calhoun*.¹⁷⁴ The disagreement arose between the commissioners and the sheriff of Henry County. The commissioners sought an injunction to compel the sheriff to cooperate in a reduction of his budget by forty-seven percent and reduction of personnel by sixty-five people. The sheriff based his resistance to the injunction on the constitutional clause exempting his office from control by the county commissioners.¹⁷⁵ He relied on *Wolfe I* for the proposition that the commissioners could not unilaterally withdraw his law enforcement capacity by the creation of a county police force.¹⁷⁶ *Wolfe II* was used to support the proposition that the commissioners could not force him to relinquish his law enforcement duties by reducing his budget.¹⁷⁷

At the hearing, Judge Castellani reframed the issue as one within a larger context of service to the citizens.¹⁷⁸ Rather than address the relative scope of the commissioners' and sheriff's power, the judge found that the case required court guidance on the appropriate allocation of county personnel needed for the two offices to fulfill their constitutional and statutory duties.¹⁷⁹ Since the trial court did not find law enforcement to be part of the sheriff's constitutionally protected duties, it ordered an injunction requiring the sheriff "to cooperate in the implementation of a plan to transfer personnel and equipment to the newly created county police department."¹⁸⁰ In support of the injunction, the trial court stated, "[W]e are to concern ourselves with providing services that are efficient and effective and cost effective but within the

173. *Id.*

174. 262 Ga. at 202, 415 S.E.2d at 906.

175. *Id.* at 203, 415 S.E.2d at 907; GA. CONST. art. IX, § 2, para. 1(c) (1983). *See also Warren*, 231 Ga. at 495, 222 S.E.2d at 405.

176. *Wolfe*, 232 Ga. at 45, 205 S.E.2d at 255.

177. *Wolfe*, 233 Ga. at 164, 210 S.E.2d at 701.

178. *Chaffin v. Calhoun*, No. 91-CV-0334 at 35 (Sup. Ct. Henry County, Mar. 13, 1991) (hearing on order granting preliminary injunction).

179. Since the supreme court chose not to address this aspect of the case below, *Chaffin v. Calhoun* illustrates the avoidance doctrine in court resolution of political problems. In terms of the chicken and egg paradox it would be like inquiring whether or not one could start a chicken farm if there were no such thing as chicken eggs. The paradox of whether chickens or eggs came first is avoided by determining that chicken farms can be started with a loan from the bank.

180. *Chaffin*, 262 Ga. at 202, 415 S.E.2d at 907.

parameters [of] our offices."¹⁸¹ Gone was the issue of whether the county commissioners must prove wasteful, negligent, or ineffective use of resources to withdraw them from another county official. Gone was the issue of whether the budget was adequate for the reasonable operation of the sheriff's department.¹⁸² Gone, even, was the issue of efficiency. Nowhere in the record did Judge Castellani take evidence on the relative efficiency of the sheriff's department versus the commissioners' new police department.¹⁸³

On the sheriff's appeal, the commissioners argued that they had not withdrawn all of the sheriff's law enforcement capacities and that the trial court could have found the transfer of personnel and equipment necessary to avoid duplication of police powers. The supreme court relied on general and local acts defining the duties of county officers to uphold the trial court order and avoid meddling in the county system.¹⁸⁴ Ignoring the underlying question of whether the governing authority could tell the sheriff how to run his office, the court looked first at the general laws defining the sheriff's duties. The court found certain "enumerated duties such as maintaining the jail and serving warrants, [and] also those duties that 'necessarily appertain to his office,' such as the power to make arrests, to maintain the peace and to enforce the law."¹⁸⁵

However, the court did not find local acts limiting the Henry County Commissioners' power to establish a county police department.¹⁸⁶

181. *Chaffin v. Calhoun*, No. 91-CV-0334 at 36 (Sup. Ct. Henry County Mar. 18, 1991) (hearing on order granting preliminary injunction).

182. In delivering his opinion, the judge did leave open the possibility that the sheriff might elect to file a fifth lawsuit in order to challenge the adequacy of the budget allocation passed by the commissioners. *Chaffin v. Calhoun*, No. 91-CV-0334 and *Calhoun v. Chaffin*, No. 91-CV-0716 at 81 (Sup. Ct. Henry County, May 31, 1991). However, that issue was made moot when the supreme court affirmed the injunction.

183. The fact that Henry County had previously operated a police department and had dissolved it in 1985 when the police chief was convicted of drug trafficking was not introduced into evidence. Personal Interview with Donald Chaffin, Sheriff of Henry County (Apr. 13, 1993). What did come into evidence was \$100,000 that would become available only to whoever was operating the narcotics enforcement in Henry County (*Chaffin v. Calhoun*, No. 91-CV-0334 and *Calhoun v. Chaffin*, No. 91-CV-0716 at 32 (Sup. Ct. Henry County, May 31, 1991)) and an additional \$185,488.60 of federal money that would be available only to whoever ran the police. *Id.* at 39. These monies muddy the motivation behind the police power struggle in Henry County. However, it is settled that the courts cannot pass on the wisdom of county operations, just on their legality. *Board of Comm'rs of Fulton County v. 1991 Tax Digest for Fulton County*, 261 Ga. at 703, 410 S.E.2d at 722.

184. *Chaffin*, 262 Ga. at 203, 415 S.E.2d at 907 (citing O.C.G.A. § 15-16-10).

185. *Id.*

186. *Id.* at 202, 415 S.E.2d at 907. The court footnoted a 1992 general law (O.C.G.A. § 36-8-1 (1992); 1992 Ga. Laws 324) that requires preliminary ratification by popular vote

Having concluded that no issue of legislative preemption existed,¹⁸⁷ the supreme court deferred to the trial court's conclusion that a forty-seven percent reduction in budget did not preclude the sheriff from performing his general duties.¹⁸⁸ Chief Justice Clarke concluded, "[b]ecause we find no abuse of discretion in the trial court's entry of injunctive relief; we affirm."¹⁸⁹

These four cases illustrate the courts' self-imposed limitation on intervention in local politics. Absent a clear showing of illegality, the court resolves disputes by keeping the system going. In the words of Judge Castellani, "[W]e are all public servants."¹⁹⁰ The courts are a humble part of the political process, and their role is limited to determinations of legality, not operating policy.¹⁹¹

for any future county actions to create county police departments. 262 Ga. at 203 n.1, 415 S.E.2d at 907 n.1. Interestingly, the court does not refer to the failed 1976 local constitutional amendment to prohibit the Henry County Commissioners from establishing a county police department and vesting certain police powers in the office of sheriff. 1976 Ga. Laws 1902.

187. 262 Ga. at 203, 415 S.E.2d at 907. Significantly missing from the opinion were any references to local acts delegating additional independent power to the Henry County Sheriff, because there were none. Curiously, reference to a local act (1989 Ga. Laws 4826) making the sheriff's discretion to employ other deputies and assistants "subject to final approval of the governing authority of Henry County," was also omitted, though it was part of the record of the hearing. *Chaffin v. Calhoun*, No. 91-CV-0334 at 9 (Sup. Ct. Henry County, Mar. 13, 1991) (hearing on order granting preliminary injunction).

188. 262 Ga. at 204, 415 S.E.2d at 907-08. Although the supreme court found no abuse of discretion on the part of the county commissioners and affirmed the trial court's injunction, Chief Justice Clarke, writing the opinion in *Chaffin*, indicates that another outcome at the trial level would have been equally acceptable to the supreme court. *Wolfe I* and *Wolfe II* were cited in favor of the sheriff's position. 262 Ga. at 203-04, 415 S.E.2d at 907-08. The opinion cited *Board of Comm'rs of Randolph County v. Wilson*, 260 Ga. 482, 396 S.E.2d 903 (1990) (upholding the commissioners' authority to cut a sheriff's budget); but also cited *Board of Comm'rs of Richmond County v. Whittle*, 180 Ga. 166, 178 S.E. 534 (1934) denying the commissioners' authority to direct the sheriff how to spend what is left of it. Had the issue in *Chaffin v. Calhoun* not been judicially reframed at trial to avoid the scope of the commissioners' power, these cases would have been persuasive precedents to deny the injunction which required the Henry County Sheriff to release more than half of his staff, turn over part of his equipment, and accept a drastically reduced budget. In the words of Chief Justice Clarke, however, just based on the record, "we cannot say that the trial court's finding is clearly erroneous." 262 Ga. at 204, 415 S.E.2d at 908. Given that reading of the record by the highest court in the state, the sheriff elected to abandon further litigation and pursue the matter at the next elections. Personal Interview with Donald Chaffin, Sheriff of Henry County (Apr. 13, 1993).

189. 262 Ga. at 204, 415 S.E.2d at 908.

190. *Chaffin v. Calhoun*, No. 91-CV-0334 at 35 (Sup. Ct. Henry County, Mar. 13, 1991) (hearing on order granting preliminary injunction).

191. *Board of Comm'rs of Fulton County v. 1991 Tax Digest for Fulton County*, 261 Ga. at 703 n.1, 410 S.E.2d at 721 n.1.

VI. CONCLUSION

"There is nothing in the law that says people cannot get along"¹⁹² However, sometimes they do not. When they do not, the law is their last resort. How the courts have handled the issues is essential for predicting future resolutions. However, no guarantee exists. Hopefully, the legal understandings of past decisions will encourage more rapid resolutions of future arguments before costly litigation polarizes the parties. If the parties cannot discover local means of cooperating, then invocation of higher authorities is required. Arguably, the electorate and the general assembly are better able to resolve local government disputes than the courts.

APPENDIX I: STATUTORY DUTIES

Statutes define the duties of county officers including Judge of the Superior Court,¹⁹³ Clerk of the Superior Court,¹⁹⁴ Judge of the Probate Court,¹⁹⁵ Judge of the Magistrate Court,¹⁹⁶ District Attorney,¹⁹⁷ Grand Jury,¹⁹⁸ Tax Commissioner,¹⁹⁹ Board of Assessors,²⁰⁰ Appraisal Staff,²⁰¹ Members of the Board of Equalization,²⁰² County Clerk,²⁰³ County Manager,²⁰⁴ Emergency Management Director,²⁰⁵ County Treasurer,²⁰⁶ County Coroner,²⁰⁷ and County Police.²⁰⁸

192. Personal Interview with Grover Anderson, Probate Judge of Pike County (Summer 1992).

193. See O.C.G.A. §§ 15-6-8, 15-11-5, 19-8-2 (1992).

194. See O.C.G.A. §§ 15-6-60 et seq., 36-1-24 (1992) and local acts.

195. See O.C.G.A. §§ 15-9-30, 45-16-2, 48-5-211, (1992) and local acts.

196. See O.C.G.A. §§ 15-10-2, 36-1-20 (1992).

197. See O.C.G.A. §§ 15-18-6, 15-18-7 (1992).

198. See O.C.G.A. §§ 15-1-12, 15-12-7, 15-12-71 to -102, 20-2-10, 20-2-51, 20-2-112, 20-2-394, 36-1-7, 36-9-10, 42-4-8, 48-5-311 (1992) and population acts.

199. See O.C.G.A. §§ 48-5-21, 48-5-103, 48-5-127 (1992) and local acts.

200. See O.C.G.A. §§ 48-5-298, 48-5-299, 48-5-306 (1992).

201. See O.C.G.A. §§ 48-5-263, 48-5-264 (1992).

202. See O.C.G.A. § 48-5-311 (1992).

203. See local acts. These local acts, as amended, are indexed by county in the Official Code of Georgia. O.C.G.A. Vol. 42 (1982).

204. See local acts. These local acts, as amended, are indexed by county in the Official Code of Georgia. O.C.G.A. Vol. 42 (1982).

205. See O.C.G.A. § 38-3-27 (1992) and local resolutions.

206. See O.C.G.A. §§ 36-6-14, 36-6-15, 36-6-16, 36-6-16.1, 36-6-22 (1992) and local acts.

207. See O.C.G.A. §§ 45-16-6, 45-16-24, 45-16-27, 45-16-27.1, 45-16-66 (1992).

208. See O.C.G.A. § 36-8-5 (1992) and local resolutions.

Governing Authority's Duties

The general statutory duties of county governing authorities include: 1) control over all county property, 2) taxation, 3) maintenance of roads, 4) examining, settling, and allowing all claims against the county, 5) control of fiscal affairs, and 6) regulation of health, welfare, and county police.²⁰⁹

Local acts,²¹⁰ in combination with general acts,²¹¹ establish and control the governing authorities in each of the 159 counties in Georgia.

Sheriff's Duties

The general statutory duties of county sheriffs include: 1) execution of court orders, 2) attendance at superior and probate court sessions, 3) attendance at election polling places, 4) publication of sales, citations, and other legal proceedings, 5) performance of any other duties imposed

209. O.C.G.A. § 36-5-22.1 (1992) Powers and duties; delegation

(a) The governing authority of each county has original and exclusive jurisdiction over the following subject matters:

(1) The directing and controlling of all the property of the county, according to law, as the governing authority deems expedient;

(2) The levying of a general tax for general county purposes and a special tax for particular county purposes;

(3) The establishing, altering, or abolishing of all roads, bridges, and ferries in conformity to law;

(4) Reserved;

(5) The filling of all vacancies in county offices unless some other body or official is empowered by law to so fill such vacancy;

(6) The examining, settling, and allowing of all claims against the county;

(7) The examining and auditing of the accounts of all officers having the care, management, keeping, collection, or disbursement of money belonging to the county or appropriated for its use and benefit and the settling of the same;

(8) The making of such rules and regulations for the support of the poor of the county, for the county police and patrol, for the promotion of health, and for quarantine as are authorized by law or not inconsistent therewith; and

(9) The regulating of peddling and fixing of the cost of licenses therefor.

(b) Nothing in this Code section shall be construed to prohibit a local law from delegating to a chairman or chief executive officer of a county governing authority jurisdiction over any subject matter provided for in subsection (a) of this Code section.

210. These local acts, as amended, are indexed by county in the Official Code of Georgia. O.C.G.A. Vol. 42 (1992).

211. See, e.g., O.C.G.A. § 36-5-22 to -26 et seq. (1992).

by law or which necessarily relate to the sheriff's office,²¹² and 6) custody of the jail.²¹³

Historically, Georgia sheriffs trace their duties back to England. As agents of the courts, sheriffs were bailiffs, jailers, servers of court orders, and evictors or dispossessors of persons illegally in possession of real property. Over time these duties came to include keeping the peace.²¹⁴ Just as the office of sheriff in England pre-dated Bobby Peale's police force, so the office of sheriff in Georgia pre-dated both county and metropolitan police forces.²¹⁵ In the rural counties of Georgia, sheriffs still serve as the principal law enforcement officer and actively cooperate

212. O.C.G.A. § 15-16-10 (1994) Duties; penalties

(a) It is the duty of the sheriff:

(1) To execute and return the processes and orders of the courts and of officers of competent authority, if not void, with due diligence, when delivered to him for that purpose, according to this Code;

(2) To attend, by himself or his deputy, upon all sessions of the superior court of the county and also upon sessions of the probate court whenever required by the judge thereof and, while the courts are in session, never to leave same without the presence of himself or his deputy, or both, if required;

(3) To attend, in the same manner specified in paragraph (2) of this subsection, at the place or places of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under his charge all subordinate officers present, as police to preserve order;

(4) To publish sales, citations, and other proceedings as required by law and to keep a file of all newspapers in which his official advertisements appear, in the manner required of clerks of the superior courts;

(5) To keep an execution docket wherein he must enter a full description of all executions delivered to him and the dates of their delivery, together with all his actions thereon, and to have the same ready for use in any court of his county;

(6) To keep a book in which shall be entered a record of all sales made by process of court or by agreement of the parties under the sanction of the court, describing accurately the property and the process under which sold, the date of the levy and sale, the purchaser, and the price;

(7) To receive from the preceding sheriff all unexecuted writs and processes and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his or her predecessor's sales, when not done by his or her predecessor; and

(8) To perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office.

O.C.G.A. § 15-16-10 (1994).

213. O.C.G.A. § 42-4-4 (1994).

214. See generally, Steve Gullion, *Sheriffs in Search of a Role*, NEW LAW JOURNAL 1156 (Aug. 14, 1992).

215. The first authorization for a county police force in Georgia was in 1909. 1909 Ga. Laws 156.

with state and municipal police forces.²¹⁶ However, in metropolitan counties, political pressure to put law enforcement under the power of the governing authority tends to relegate the sheriff's duties to attendance on the courts.²¹⁷

Local acts may further define individual sheriff's duties,²¹⁸ and the courts have deferred to history by holding that the sheriff's duties include common law duties not abrogated by statute.²¹⁹

216. HANDBOOK FOR GEORGIA SHERIFFS 29-30, 48-49 (Inge Whittle & Dorothy H. Paul, eds., 3d ed. 1988).

217. For instance, when the sheriff of DeKalb County refused to limit his role to court related duties, the commissioners supported a new sheriff candidate who had no pretensions about doing general law enforcement. The challenger defeated the incumbent sheriff and the county police department took over the sheriff's law enforcement duties. Personal Interview with Manual Maloof, Former Chairman of the DeKalb County Commission (Feb. 3, 1993). For the Henry County analog of the DeKalb commissioners versus the sheriff conflict, in which the incumbent sheriff was not taken out at the polls, see *Chaffin v. Calhoun*, 262 Ga. 202, 415 S.E.2d 906 (1992) discussed below.

218. See, e.g., Henry County - Sheriff; Clerk of the Superior Court; Judge of the Probate Court; Tax Commissioner; Compensation, 1989 Ga. Laws 4824.

219. *Hannah v. State*, 212 Ga. 313, 321, 92 S.E.2d 89, 95 (1956), citing with approval *Elder v. Camp*, 193 Ga. 320, 18 S.E.2d 622 (1942) and interpreting GA. CODE ANN. § 24-2813(8) now codified at O.C.G.A. § 15-16-10(8). See Appendix I.